

NOT RENTING TO IMMIGRANTS VIOLATES FAIR HOUSING LAWS

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We are writing this to remind everyone about laws that cover obligations and restrictions related to employing someone who is undocumented. There is also language in the immigration code that speaks to harboring people who are undocumented. However, none of this should inform your actions as a housing provider. Employment law has no impact on housing law and housing-specific case law has proven that simply housing someone does not constitute “harboring.”

To be clear, denying housing based on national origin violates fair housing laws, regardless of whether the person lives here legally.

To be clear, our message has always been and remains the same: People living in the U.S. who are either here legally but are not U.S. citizens, or who are here without documentation have many basic rights; fair housing laws address some of those rights. **Denying housing** or otherwise discriminating in the level of service provided to applicants and residents **because of** their race, color, or **national origin** (as well as other protected classes at the federal, state and local levels) **violates fair housing laws, regardless of the person’s immigration status.** The feds make no real distinction between immigrants -- illegal or not -- so renting to either is subject to the same laws as renting to a citizen of the United States. All who reside within the U.S. have civil rights protection in housing-related transactions or situations.

Regardless of your personal opinions, you should know that nothing in housing law makes it illegal to rent to someone who is in the country without proper documentation. Some jurisdictions around the country have tried to make it a crime. However, this has not been attempted federally or within the states of Oregon or Washington and, to the best of our knowledge, all of the laws that were passed elsewhere in the country have either already been overturned or are in the process of being challenged in court.

As always, be careful of your assumptions. Assuming some people “look like” they’re here illegally and others don’t can lead to violations of the fair housing laws. Again, it is illegal to deny applicants simply because of where they’re from (either from the U.S. or from another nation). Be careful, too, of assumptions about household makeup based on race or national origin. Don’t assume “certain kinds of people” will rent a property, then turn around and invite undocumented immigrants to stay with them. If this happens, it is more likely than not a lease violation and should be dealt with accordingly. Don’t assume “certain kinds of people” have larger or extended families and base your rental decisions on that. Set reasonable occupancy standards and enforce them equally across all of your rental units.

So, what are your responsibilities? The Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) make no requirements of landlords in this regard. There are no state or federal forms you are required to fill out informing the government that you are renting to an undocumented individual. You are not an ICE or DHS agent and are not expected to be an expert on all the documentation needed to verify that someone entered the country legally. Frankly, I wouldn’t want the liability that may come with trying to play cops and robbers.

So, how do you screen someone who either has no documentation or has alternative documentation such as a student or work visa, or Individual Taxpayer ID Number (ITIN)? First of all, talk with your screening company. Some have effective workarounds; others do not. Find one that does. Now, if the expense of a manual background check costs you more, you would be advised *not* to pass on the higher cost to the applicant. While that might, at first glance, appear to be a legitimate business expense, it can also be argued that it disproportionately impacts national origin as a protected class. For additional suggestions on alternative screening methods aimed at verifying the applicant is who they say they are, that they pay their bills on time, and to check their past rental and criminal histories visit www.FHCO.org/pdfs/SuggestedAltDocs.pdf or www.kingcounty.gov/~media/exec/civilrights/documents/NOdocs.ashx.

What if applicants provide a fake social security number when they apply? Well, in that case, they have lied on their application and can be denied or evicted on that basis. We never recommend applicants (whether they are immigrants or not) lie or use a false identification number. And we advise landlords to be careful to not treat applicants and residents differently because of where they come from. If you have questions about fair housing law, please consider us a resource and let us know! You may want to start on our website where we have not only the Alternative Screening document posted but also an entire page with tons of resource documents and links just for housing providers like yourself. You can find it at http://fhco.org/hs_provider_info.htm.

We also recommend you consult an attorney -- one specifically well versed in fair housing law -- should you face a situation that may be impacted by fair housing law.

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